

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH
COMPANY

EDISON

Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois

Docket 13-0657

MOTION TO STRIKE PORTIONS OF COMED’S BRIEF ON EXCEPTIONS

Intervenors William Lenschow, Thomas Pienkowski, Kristine Pienkowski, John Tomasiewicz, Jerry Drexler, Kristin Drexler, Robert Mason, Diane Mason, and Ellen Roberts Vogel, and Utility Risk Management Corporation (together, “SKP Parties and URM”), pursuant to 83 Ill. Admin. Code § 200.190, move the Illinois Commerce Commission (“Commission”) to strike portions of the Brief on Exceptions of Commonwealth Edison Company (“ComEd BOE”). In support of its Motion to Strike, SKP Parties and URM state as follows:

1. ComEd filed its BOE on September 18, 2014. The ComEd BOE improperly contains evidence not in the record, and, in violation of §200.830(e) of the Rules of Practice, fails to cite to the record to support a number of factual statements.

2. None of ComEd’s arguments which contain facts not in the record may be considered, as arguments of counsel are not evidence. *People v. Evans*, 125 Ill.2d 50, 95, 530 N.E.2d 1360 (1988); *Johnson v. Lynch*, 66 Ill.2d 242, 246, 362

N.E.2d 345 (1977). Rule 200.830(e) states that all statements of fact in briefs on exception should be supported by citation to the record.

3. The portions of the ComEd BOE that should be stricken are as follows:
 - a. Page 25 – “The record shows exactly how Illinois retail customers and market efficiency have been harmed by the ARR infeasibilities that the Project remedies. ARR credits to customers in the ComEd load zone totaled more than \$100 million in 2013 alone.” Also, fn 36 should be stricken.
 - b. Bottom page 26 – “that claim would be contrary to the overwhelming weight of the evidence and to the actual tariffs and rules that govern those ARRs. The ARRs are allocated to all Load Serving Entities in the ComEd zone, and the credits those LSEs receive benefit all customers.”
 - c. Page 28 – “ARRs may be “bid into” to the FTR auction to claim the underlying FTR itself, and some market participants do that.”

“To those LSE, the unconverted ARRs continue to be a right to receive the auction proceeds.”

“That ARR payment is unaffected by whether ComEd ever owns, uses, buys, or sells a single FTR, or by whether ComEd owns generation, uses long-term supply contracts, or buys in the spot market. It is simply a right to receive money on behalf of customers.”
 - d. Page 29 – “PJM records confirm this fact – more than 9,500 MW in Stage 1A ARRs were awarded to LSEs in the ComEd Zone alone

in the past two PJM planning periods,⁴⁴ and, in PJM's 2012/2013 planning year, over \$100 million in ARR revenues were paid to customers in the ComEd zone.⁴⁵ In ComEd's case these payments are passed on to customers through Rider PE; a function the competitive market serves for customers supplied by ARES." Also, strike footnotes 44 and 45.

e. Page 30 – "The money lost by ARR infeasibilities is a loss to customers; it represents money they paid – whether through IPA bids or express transmission charges – that could have been offset by \$68.9 million in credits that they did not receive."

f. Page 31 – "The majority of load is served by ARES who are free to take advantage of both ARRs and the FTR market."

"Indeed, Stage 1A ARRs were developed by PJM, with FERC's approval, to protect such customers from unfair congestion costs caused by market transactions and to recognize the fact that native load customers have historically paid the cost of transmission system investment."

g. Page 32 – "However, as numerous witnesses testified, that same open access can result in transmission congestion with increases in the cost of delivering electricity to customers who previously had the system to themselves. These same native load customers paid for the vast majority of the costs of the transmission system, and have historically held firm rights to use that system."

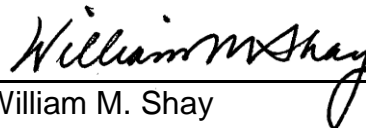
- h. Page 33 – “Those Stage 1A ARRs, at least to the extent they remain feasible, allow native load customers to once again receive the full value of their investments and render the market more equitable.”

WHEREFORE, for reasons contained herein, the SKP Parties and URM respectably request that the portions of ComEd’s BOE quoted or otherwise cited above be stricken from the record and not considered by the Commission in any manner.

September 25, 2014

Respectfully submitted,

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Kristine Pienkowski, John Tomasiewicz,
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